



Federal Communications Commission
Washington, D.C. 20554

February 7, 2020

DA 20-140

License Acquisitions, LLC
Attn: Carole L. Downs
3131 E. Camelback Road, Suite 430
Phoenix, AZ 85016

Re: Renewal Application File Nos. 0008266390, 0008266391, 0008266392,
0008266393
Stations WPLM227, WPLM228, WPLM229, WPLM230

Dear Ms. Downs:

On June 27, 2018, License Acquisitions, LLC (LA), filed untimely applications to renew the licenses for Stations WPLM227, WPLM228, WPLM229, and WPLM230 (Licenses), along with a request for waiver of the filing deadline.¹ For the reasons discussed below, we deny LA's request for waiver of the filing deadline and dismiss its late-filed renewal applications.

BACKGROUND

The Licenses authorize Specialized Mobile Radio (SMR) service on an Economic Area (EA) basis on three megahertz of spectrum on Channel Block A (816-816.5 MHz and 861-861.5 MHz) in the following EAs: Western Oklahoma, OK (BEA126); Abilene, TX (BEA128); San Angelo, TX (BEA129); and Amarillo, TX-NM (BEA138). The Licenses were part of a batch of 11 800 MHz ESMR Licenses LA acquired from Lone Star Wireless, LLC, in July 2010.² The Licenses originally were held by Silver Palm Communications, Inc. (Silver Palm).³ In 2005, Silver Palm elected to relocate all 11 Licenses to the Enhanced Specialized Mobile Radio (ESMR) band.⁴ This election was still in effect when the Licenses were assigned to LA.⁵ The

¹ License Acquisitions, LLC's Request for Waiver and Renewal, FCC File Nos. 0008266390, 0008266391, 0008266392, 0008266393 (filed June 27, 2018) (*Waiver Request*). These renewal applications were placed on public notice as accepted for filing on July 5, 2018. See *Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing*, Public Notice, Report No. 13317 (WTB 2018). The Enterprise Wireless Alliance (EWA) submitted an Opposition to Request for Waiver and Renewal on July 6, 2018, and Sprint Corporation filed a Petition to Deny on August 3, 2018.

² *Waiver Request* at 2.

³ See ULS File No. 0004199777.

⁴ See *License Acquisitions, LLC, Request To Rescind ESMR Election – Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Order, 33 FCC Rcd 2211, 2211, para. 3 (PSHSB 2018) (*Rescission Denial Order*).

⁵ *Waiver Request* at 2. In November 2017, LA filed a petition to rescind Silver Palm's election to relocate the spectrum to the ESMR portion of the 800 MHz band. See Letter from Rob Somers, Esq., General Counsel, License Acquisitions, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 28, 2017).

four Licenses that are the subject of this decision had already been renewed when LA acquired them in 2010. The seven remaining licenses were due for renewal in May 2011 (2011 Licenses). LA submitted timely renewal applications for the 2011 Licenses,⁶ so we do not address renewal of the 2011 Licenses in this decision.

On December 18, 2017, nearly three months prior to the renewal deadline for Stations WPLM227, WPLM228, WPLM229, and WPLM230, the Commission's Universal Licensing System (ULS) issued a courtesy letter reminding LA that the authorizations for each of these Licenses would expire soon and needed to be renewed.⁷ Despite the reminder, LA did not file a renewal application and waiver request until three and a half months after the Licenses expired.

DISCUSSION

Under section 1.949(a) of the Commission's rules, licensees must file renewal applications no sooner than 90 days prior to expiration and no later than the expiration date of the license for which renewal is sought.⁸ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.⁹ Licensees may, however, file an application for renewal and request a waiver of the filing deadline if the renewal application is not filed in a timely manner. Such waivers are not routinely granted, however. Pursuant to section 1.925 of the Commission's rules, a waiver may only be granted if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(*Somers Letter*). The Public Safety and Homeland Security Bureau (PSHSB) denied the rescission request on March 12, 2018, finding that it would be too disruptive to the rebanding process to allow LA to switch from ESMR to non-ESMR spectrum 12 years after the fact. *See Rescission Denial Order*, 33 FCC Rcd at 2214, para. 12. LA then filed a petition for reconsideration in April 2018 (Letter from Rob Somers, Esq., General Counsel, License Acquisitions, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 9, 2018)), which PSHSB denied on procedural grounds (i.e., failure to properly file) in July 2018. *See License Acquisitions, LLC, Request To Rescind ESMR Election – Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Order, 33 FCC Rcd 73345, 7335, para. 3 (PSHSB 2018). LA sought review of the PSHSB's decision on August 24, 2018. *See Application for Review by License Acquisitions, LLC* (filed August 24, 2018). The Commission denied the application for review and affirmed PSHSB's decision to dismiss the petition. *See License Acquisitions, LLC Request To Rescind ESMR Election – Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Order, 34 FCC Rcd 3597 (2019) (*Rescission AFR Denial Order*) (denying application for review).

⁶ LA timely submitted renewal applications for seven licenses (WPSJ755, WPSJ756, WPSJ760, WPSJ761, WPSJ762, WPSJ766, and WPSJ767) on May 23, 2011. *See* ULS File Nos. 0004738836, 0004738838, 0004738839, 0004738840, 0004738841, 0004738842, and 0004738843. LA also asked the Commission to waive the requirement that it complete the 800 MHz rebanding process and offer ESMR service by the end of its license term. *See License Acquisitions, LLC's Request for Waiver of the Deadline for Completion of 800 MHz Rebanding* (filed May 23, 2011). Sprint Corporation petitioned the agency to deny the renewal and waiver requests in June 2011. *See Sprint Nextel Corporation's Opposition to Request for Waiver* (filed June 30, 2011) and *Opposition to Applications for License Renewal* (filed June 30, 2011). The renewal and waiver applications for these seven licenses remain pending.

⁷ Renewal Reminder Notice, ULS Reference Nos. 6320360, 6320361, 6320362, and 6320363 (Dec. 18, 2017). To assist licensees in the renewal process, the Wireless Telecommunications Bureau sends a renewal reminder notice to licensees approximately 90 days before the license expiration date. This notice is a courtesy, and non-receipt of this notice by the licensee is not sufficient justification for the licensee's failure to file a timely renewal application with the Commission. Each licensee is responsible for ensuring its license(s) and license information is kept current.

(2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰ LA has failed to meet this waiver standard.

While the Commission has acknowledged that, under some circumstances, a waiver of the filing deadline is appropriate,¹¹ such is not the case here. Unlike situations in which a licensee's renewal application and request for waiver are filed within 30 days of the license expiration date,¹² LA waited over three and a half months beyond the March 10, 2018 deadline for filing an application for renewal, despite being alerted to this deadline.

In determining whether to grant a waiver request, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee's performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.¹³ The length of delay here is not *de minimis*. LA filed more than three and half months late, when it was on notice of the impending deadline. In cases such as this, where the renewal application is filed more than 30 days after the license expiration date, not only are waiver requests not routinely granted, but the waiver denial may be accompanied by enforcement action.¹⁴ We find that LA has failed to make the requisite showing that grant of its Waiver Request is warranted under the circumstances presented.

In its *Waiver Request*, LA claims that the renewal notice mailed by the Wireless Telecommunications Bureau was never received, "perhaps due to conflicting addresses in the Universal Licensing System."¹⁵ LA also asserts an unsubstantiated claim that the Commission treated all eleven of the Licenses possessed by LA as one, which contributed to "LA [failing to] realize the expiration date had passed."¹⁶ LA also argues that by granting its waiver and renewal requests, the Commission would be acting in the public interest because this would allow the

⁸ 47 CFR § 1.949(a).

⁹ *Id.* § 1.955(a)(1).

¹⁰ *Id.* § 1.925(b)(3)(i)-(ii).

¹¹ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485, para. 22 (1999) (*ULS MO&O*).

¹² Under its policy regarding late-filed renewal applications in wireless services, the Commission has acknowledged that there may be circumstances when a renewal filing is missed and that the subsequent denial of the renewal application and termination of the license would be too harsh a result in proportion to the nature of the violation. To mitigate a harsh result, under the Commission's policy regarding late-filed renewal applications in wireless services, where a renewal application is filed up to 30 days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules, but the licensee may be subject to enforcement action. *ULS MO&O*, 14 FCC Rcd at 11485, para. 22.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Waiver Request* at 3.

¹⁶ *Id.*

spectrum in question to “be put into use as soon as the rebanding process is completed.”¹⁷ Finally, LA claims that it faces unique and unusual factual circumstances under the 800 MHz rebanding process, which “has made construction and use of the licenses problematic, if not impossible.”¹⁸

The Commission previously has determined that inadvertent failure to renew a license in a timely manner is not unique or so unusual as to warrant a waiver of the Commission’s rules.¹⁹ In particular, the Commission expressly has rejected certain reasons for a licensee’s inadvertent failure to file a renewal application in a timely manner, including “turnover in recordkeeping personnel, failure to check computer records, simple forgetfulness” or “administrative oversight,”²⁰ and it has emphasized that a licensee is fully responsible for knowing the terms of its license and filing a timely renewal application.²¹ The Commission specifically addressed the concern that a renewal notice letter could be sent to the wrong address if the information in the ULS database is incorrect by clearly and unequivocally stating that “[p]roviding correct information . . . is also the responsibility of the licensee.”²²

The instant case is unlike cases in which we have granted waivers of the deadline for filing renewal applications where the licensee has demonstrated it attempted in good faith to comply with Commission requirements.²³ LA has provided no information to support a finding that it attempted in good faith to comply with Commission rules with respect to the renewal of its Licenses. For example, LA has not described any steps that it might have taken during the 90-

¹⁷ *Waiver Request* at 3.

¹⁸ *Id.* at 3-4.

¹⁹ See *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021, para. 5 (2001) (*Anderson Communications*); *Peacock’s Radio and Wild’s Computer Service, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15016, 15017, para. 5 (2001) (*Peacock’s Radio*) (citing *Fresno City and County Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998, para. 11 (2000) (*Fresno City*) (citing *Plumas-Sierra Rural Electric Cooperative*, Order, 15 FCC Rcd 5572, 5575, para. 9 (PSPWD WTB 2000)); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Elizabeth R. Sachs, Esq., Counsel for G & D Communications, Inc., at 3 (ULS Call Sign WNYV719) (June 30, 2011); Ramona P. Patts, City of Columbus, Ohio, Letter, 25 FCC Rcd 16326, 16327 (BD WTB 2010) (*City of Columbus Decision*) (citing Ms. Elaine Piccolo, AlarmNet, Inc., Letter, 24 FCC Rcd 11766, 11767-68 (BD WTB 2009) (*AlarmNet Decision*)); Ms. Janet Tucker, ConocoPhillips Communications Inc., Letter, 24 FCC Rcd 11755, 11756 (BD WTB 2009) (*ConocoPhillips Decision*)).

²⁰ *ULS MO&O*, 14 FCC Rcd at 11485, para. 21; see *DeltaCom, Inc., Applications for Renewal and Requests for Waiver of Filing Deadline*, 27 FCC Rcd 3982, 3986, para. 12 (WTB MD 2012) (*DeltaCom*) (denying a request for waiver of the deadline for filing renewal applications where the licensee did not file its applications in a timely manner because of administrative oversight); *City of Columbus Decision*, 25 FCC Rcd at 16327 (same); Alan S. Tilles, Esq., Bangor Hydro Electric Company, Letter, 25 FCC Rcd 13312, 13314 (BD WTB 2010) (*Bangor Hydro Decision*) (same); *AlarmNet Decision*, 24 FCC Rcd at 11767 (same); *ConocoPhillips Decision*, 24 FCC Rcd at 11757 (same); Billy Williford d/b/a Jasper Mobil Phone, 17 FCC Rcd 477, 479, para. 5 (CWD WTB 2002) (affirming the underlying Branch ruling that inadvertent oversight is an insufficient basis for granting waiver of the deadline for filing renewal applications); Malden R-1 School District, Order, 17 FCC Rcd 23654 (PSPWD WTB 2002) (denying a request for waiver of the deadline for filing renewal applications where the licensee did not file its applications in a timely manner because of its own administrative oversight; it misfiled the Commission’s renewal notices and only filed the applications after the notices came to the appropriate person’s attention nearly two months after the licenses expired).

day renewal period to submit the required applications in a timely manner or any actions taken to renew the authorization during the 30 days after the license expired. We have previously found that a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner and a licensee that takes no action until after the filing deadline, typically by overlooking the deadline.²⁴

Similarly, LA provides no information supporting its argument that it failed to submit a renewal application in a timely manner because of an incorrect address. Even if this were true, it does not warrant waiver of the renewal deadline. LA is fully responsible for knowing the terms of each of its licenses and filing timely renewal applications. LA is also fully responsible for maintaining updated contact information for its licenses in ULS.

LA's claim that the Commission somehow consolidated its review of all eleven ESMR licenses²⁵—therefore excusing its confusion regarding the expiration date of the four Licenses in question—is also unavailing. This assertion is not supported by any Commission communication or decision respecting LA's ESMR licenses. Indeed, Commission records clearly show that the four lapsed Licenses at issue here have different expiration dates than LA's seven other ESMR licenses, which were scheduled to expire in 2011. The administrative obligations for each license must be observed on a license-by-license basis.

Furthermore, LA's argument that a waiver is in the public interest because it would allow it to put the spectrum to use most quickly is not persuasive. Since it acquired the Licenses nearly ten years ago, LA has failed to put the spectrum to productive use²⁶ or to relocate the Licenses to the ESMR band as it consistently represented to the Commission that it would do²⁷—that is, until

²¹ *ULS MO&O*, 14 FCC Rcd at 11485, para. 21; *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules To Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, 13 FCC Rcd 21027, 21071, para. 96 (1998) (*ULS R&O*); see also James A. Kay, Jr., *Memorandum Opinion and Order*, 18 FCC Rcd 7585, 7587-88, para. 8 (2003) (stating that it is well-established that licensees are responsible for submitting renewal applications in a timely manner); *Anderson Communications*, 16 FCC Rcd at 15021, para. 5 (emphasizing that each licensee is solely responsible for knowing the terms of its license and submitting a renewal application in a timely manner); *Peacock's Radio*, 16 FCC Rcd at 15017, para. 5 (same).

²² *ULS MO&O*, 14 FCC Rcd at 11485, para. 21.

²³ See *DeltaCom*, 27 FCC Rcd at 3986-87, para. 13 (citing Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Mr. Philip Adler, Tuchman & Brown Investments Inc. No. 2 (ULS Call Sign WPQP245) (Dec. 14, 2011)); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Pilot Communications (ULS Call Signs KNKI208 *et al.*) (July 11, 2011); *Paging Systems, Inc.*, Order, 26 FCC Rcd 5913 (MD WTB 2011), *aff'd on reconsideration*, 26 FCC Rcd 16175, 16177, para. 6 (MD WTB 2011); *City of Dardanelle Fire Department*, Order, 17 FCC Rcd 10901 (PSPWD WTB 2002); *Kent H. Sager*, Order, 16 FCC Rcd 21353 (CWD WTB 2001); *KNTV License, Inc.*, Order, 16 FCC Rcd 20440 (PSPWD WTB 2001); *Navopache Electric Cooperative, Inc.*, Order, 16 FCC Rcd 11870 (PSPWD WTB 2001); *City of Henderson, Nevada*, Order, 14 FCC Rcd 16156, 16158-59, para. 7 (PSPWD WTB 1999). See also James H. Barker, Esq., Cricket Licensee (Reauction), Inc., *Letter*, 24 FCC Rcd 3298, 3302-03, para. 4 (MD WTB 2009) (*Cricket Reauction*) (granting a request for waiver of the deadline for filing a renewal application, in part, where the licensee provided a copy of a "draft" renewal application that was generated in ULS within the 90-day renewal period, but not filed, demonstrating that the licensee intended to retain its license and attempted in good-faith to comply with Commission rules).

November 2017, when it unsuccessfully tried to rescind the ESMR election.²⁸ In its renewal application, LA even declared its intent to lease the spectrum under the Licenses to M2M Spectrum Networks LLC d/b/a Iota specifically for use in the former interleaved portions of the 800 MHz band, notwithstanding the fact that the licenses have been dedicated to ESMR services.²⁹ The leasing arrangement LA sought to pursue was dependent on the Commission granting LA's rescission request—which the Commission declined to do.³⁰ Consequently, LA has failed to demonstrate that it has taken any steps to put its spectrum to use, and its failure over the long tenure of its holding of these Licenses belies its assertion that it is best qualified to get the spectrum to market the fastest. LA has also failed to show how revocation of its Licenses would negatively impact the public, especially in light of the fact that it admits that it currently has no customers and has had none during the entire time it has held the authorizations.³¹

Finally, while the 800 MHz rebanding process may have delayed provision of ESMR service, it did nothing to prevent LA from timely filing its renewal applications. The 800 MHz rebanding process does not impact administrative update requirements and had no bearing on LA's failure to keep current its address on file in ULS or to file timely renewal applications for its Licenses. Presumably under the same circumstances, LA managed to timely-file waiver and renewal applications for the seven 800 MHz licenses that expired in 2011. LA seeks to displace responsibility for the expiration of its Licenses, but its failure to file in a timely manner only reflects its own administrative missteps.

Consistent with precedent and based on our review of the record, we find that LA neither provides reasons for its late filings sufficient to grant a waiver nor offers information demonstrating negative outcomes for the public upon termination of the Licenses. Taking into account all of the facts and circumstances, we conclude that LA's failure to renew its Licenses in a timely manner because of administrative oversight and an unwillingness to work within the

²⁴ See *Cricket Reauction*, 24 FCC Rcd at 3305-06 (finding a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner and a licensee that takes no action until after the filing deadline, in which case the licensee has almost always simply forgotten about or overlooked the deadline); *State Contracting and Engineering Corporation*, Order on Reconsideration, 18 FCC Rcd 1685, 1689, para. 11 (PSPWD WTB 2003) (finding a clear distinction between a licensee that unsuccessfully attempts to renew the license before it expires and one that submits nothing until more than 30 days after the license expiration date).

²⁵ *Waiver Request* at 3.

²⁶ See *Waiver Request* at 3-4, wherein LA states: "The 800 MHz rebanding process [...] has made construction and use of the licenses problematic, if not impossible. Nonetheless, LA has persevered throughout this unprecedented lengthy process to be in a position to use the licenses once rebanding is complete."

²⁷ See, e.g., Request for Waiver of the Deadline for Completion of 800 MHz Rebanding, WT Docket No. 02-55, filed by License Acquisitions, LLC, at 2 (May 20, 2011) ("Licensee has made, affirmed, and re-affirmed its election to relocate its EA license to the ESMR band with the Transition Administrator...").

²⁸ See *Somers Letter* at 1.

²⁹ See *Waiver Request* at 2.

³⁰ See *Rescission Denial Order* at 1 (dismissing reconsideration); *Rescission AFR Denial Order* at 1 (denying review).

³¹ See *Waiver Request* at 2.

existing rules and procedures does not justify waiver of the Commission's rules. We therefore deny the request for waiver and dismiss the associated renewal applications.

ORDERING CLAUSES

1. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the waiver request filed in association with File Nos. 0008266390, 0008266391, 0008266392, and 0008266393 by License Acquisitions, LLC, for licenses WPLM227, WPLM228, WPLM229, and WPLM230 on June 27, 2018, IS DENIED.

2. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.131, 0.331, 1.934, 1.949, and 1.955 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.949, 1.955, the renewal applications, File Nos. 0008266390, 0008266391, 0008266392, and 0008266393 filed by License Acquisitions, LLC, for licenses WPLM227, WPLM228, WPLM229, and WPLM230 on June 27, 2018, ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau